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PROVISIONAL SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at the Parque Central, Caracas,
on Tuesday, 23 July 1974, at 3.30 p.m.

Chairman:	Mr. AGUILAR	Venezuela
Rapporteur:	Mr. NANDAN	Fiji

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STRAITS USED FOR INTERNATIONAL NAVIGATION (A/CONF.62/C.2/L.3, L.11, L.15, L.16 and L.19; A/AC.138/SC.II/L.4, L.18, L.30 and L.42) (continued)

Mr. SULEIMAN (Oman) introduced the draft articles on navigation through the territorial sea, including straits used for international navigation (A/CONF.62/C.2/L.16), and reiterated the following basic principles:

(1) Navigation through the territorial sea and through straits used for international navigation should be dealt with as an entity, since the straits in question formed part of the territorial sea.

(2) Regulation of navigation through straits should establish a satisfactory balance between the particular interests of the coastal State and the interests of international maritime navigation.

(3) The regulation should contribute both to the security of coastal States and to the safety of international maritime navigation. Those objectives could be achieved by the reasonable and adequate exercise by the coastal State of its right to regulate navigation through its territorial sea.

(4) The regulation should take due account of the economic realities and scientific and technological developments which have taken place in recent years, and should establish appropriate rules to regulate navigation of certain ships with special characteristics.

(5) The regulation should, finally, meet the deficiencies of the 1958 Convention, especially those relating to the passage of warships through the territorial sea, including straits.

The draft articles contained in document A/CONF.62/C.2/L.16 were divided into two parts: part I dealt with innocent passage through the territorial sea and part II dealt with the right of innocent passage through straits used for international navigation. Article 1 on the right of innocent passage reproduced article 14 (1) of the Geneva Convention on the Territorial Sea and the Contiguous Zone. Article 2 defined passage; paragraph 1 was the same as article 2 of the Fiji draft, although it had been considered necessary to retain the phrase "internal waters" as it had originally appeared in article 14 (2) of the Geneva Convention. Paragraph 3 had been taken from article 3 (2) of the eight-Power draft.

Article 3 (2) was a modification of draft article 16 (2) of the United Kingdom draft articles (A/CONF.62/C.2/L.3) with the words "such as" introduced to indicate that the list of activities was not exhaustive.

The duties of the coastal States were enumerated in article 4, whereas article 5 dealt with the rights of coastal States.

Article 6 dealt with the regulation of international navigation in accordance with the rules of international law.

Article 8 dealt with the navigation of ships with special characteristics. It should be noted that no prior notification was required under the article for the passage of oil tankers and chemical tankers.

Merchant ships were given special treatment under article 10.

Article 13 dealt with government ships operated for commercial purposes, whereas article 14 concerned government ships operated for non-commercial purposes. Under article 15 (3) the coastal State could require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea.

Part II of the draft articles (A/CONF.62/C.2/L.16) dealt with the right of innocent passage through straits used for international navigation. Article 20 covered the straits as defined in the Corfu Channel Case and therefore did not apply to straits which historically had not been used for international navigation. Article 22, which dealt with special duties of coastal States, contained an important innovation in that it established the rule that passage of foreign merchant ships through straits should be presumed to be innocent. That presumption of innocent passage was a new idea which was justified by the recognition that merchant ships performed an internaticnal duty to mankind and an important role in international trade, which was an instrument for development.

Mr. CHAO (Singapore) said that the question of international navigation through straits was important to his country first because Singapore depended to a large extent on international trade and the maintenance of the free flow of traffic through the straits was therefore vital to it, and secondly for reasons of its geographical situation, since it was locked in on all sides by the territorial waters of its neighbouring States and its only access to the high seas was through the straits.

(Mr. Chao, Singapore)

The Committee had before it three sets of draft articles: the eight-Power draft (A/AC.138/SC.II/L.18), the Fiji draft (A/AC.138/SC.II/L.42) and the more recent United Kingdom draft articles (A/CONF.62/C.2/L.3). There were basic differences of approach among the three drafts. The eight-Power proposal was based on the fact that navigation through the territorial sea and through straits used for international navigation should be dealt with as a single entity since the straits in question formed part of the territorial sea. The Fiji proposal only applied to straits indirectly when, in article 4 (2). it provided that there should be no suspension of the innocent passage of foreign ships through straits used for international navigation.

Straits formed a vital link between different parts of the globe and the maintenance of that communication was essential for the benefit of the whole international community. Passage through territorial seas was less vital and for that reason separate régimes would be set up for the territorial sea and for straits. In any case, what was important in the last analysis was to adopt rules which would be objective.

Mr. LACLETA Y MUÑOZ (Spain) said that all the proposals submitted to the Committee reflected two different schools of thought with regard to passage through straits used in international navigation. There were three different points to be considered in connexion with those proposals: how they would affect the nature of ocean space, how they would affect the régime governing navigation in those waters, and, lastly, what attitude they indicated towards the fundamental distinction between merchant ships and warships.

For one group of States, the waters of a strait were no longer, strictly speaking, part of the territorial sea. Document A/AC.138/SC.II/L.4 stated that "all ships and aircraft in transit shall enjoy the same freedom of navigation and overflight for the purposes of transit through and over such straits as they have on the high seas". The words "as they have on the high seas" had been dropped from the text in document A/CONF.62/C.2/L.11, but a careful perusal of article 1, paragraph 2, showed that the freedom it referred to was the same as the freedom of the high seas.

On the other hand, the draft submitted by Fiji (A/AC.138/SC.II/L.42) and the eight-Power draft (A/AC.138/SC.II/L.18), like the draft recently submitted by Oman (A/CONF.62/C.2/L.16) rightly included the question of straits under the same heading

(Mr. Lacleta y Muñoz, Spain)

as in General Assembly resolution 2750 (XXV), i.e., that of the régime of territorial sea. Although the straits might be used for international navigation, they formed "part of the territorial sea of one or more States", as stated so well by Oman in article 20 of the draft articles it had submitted.

The Spanish delegation had clearly stated its position that the sovereignty of a coastal State extended to straits forming part of its territorial sea, whether or not they were used for international navigation (A/CONF.62/C.2/L.6).

As to the effects of the proposals on the régime governing navigation through straits, the proposals in documents A/CONF.62/C.2/L.3, L.11 and L.15, like those in documents A/AC.138/SC.II/L.4 and L.30, used the same formula: freedom of navigation for all ships and freedom of overflight for all aircraft. Their real aim was to establish the same freedom for navigation through straits as for navigation on the high seas, a freedom that had already been recognized. Certain countries were trying to get the Conference to reduce the breadth of the territorial sea to three miles in certain sea areas, i.e., the straits of other States.

The second school of thought was reflected in documents A/AC.138/SC.II/L.18 and A/CONF.62/C.2/L.16, which referred to the régime of navigation through straits as a "right of innocent passage". That régime achieved a balance between the interests of the coastal State and the legitimate interests of international navigation. Document A/CONF.62/C.2/L.16 clearly defined innocent passage and the powers of the coastal State with regard to it. That was a well-balanced proposal which harmonized the rights and duties of all the parties concerned, and it was a suitable basis for negotiation.

As to the distinction between merchant ships and warships, he pointed out that the navigation of merchant ships through straits must be guaranteed and facilitated as they were the carriers of trade and the means of peaceful international co-operation; but it was different with warships, whose mere passage through waters under foreign sovereignty implied a potential threat to the coastal State. Documents A/CONF.62/C.2/L.3, L.11 and L.15, like documents A/AC.138/SC.II/L.4 and L.30, made no distinction between merchant ships and warships, and there was one very significant element in all those texts: the provision that submarines should navigate on the surface and show their flag had been dropped. It would seem then that the aim was to allow submarines to pass through the ocean space under the sovereignty of

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(Mr. Lacleta y Muñoz, Spain)

another State without that State's knowledge. Those proposals also had another characteristic in common, namely, they provided for freedom of overflight in transit for all types of aircraft whether civil or military over the straits. That would be tantamount to amending the Chicago Convention of 1944, which required prior authorization of the State concerned for the overflight by military aircraft of its territorial sea, of which straits formed a part.

The régime of innocent passage applied strictly to navigation on the surface, and had nothing to do with the secret passage of submerged vessels or overflight. The eight-Power draft, like document A/CONF.62/C.2/L.16, was very clear on those two points. In addition, the passage of warships was regulated by rules which, while allowing the right of passage, safeguarded the rights of the coastal State by requiring that the passage should be innocent and empowering the State concerned to require prior notification or authorization.

Mr. McLOUGHLIN (Fiji) said that in the light of the many helpful comments that had been made on the draft articles his delegation had submitted to the Sea-Bed Committee (A/AC.138/SC.II/L.42) and of the proposals of other delegations, Fiji had felt it was necessary to submit a revised draft, which was to be found in document A/CONF.62/C.2/L.19. Without prejudice to any ultimate decision that might be adopted with regard to the régime of régimes applicable to the passage of foreign ships through straits, the draft articles were concerned with the concept of innocent passage both through the territorial sea and through straits. Consequently, if the régime of passage through the territorial sea proposed by his delegation was not accepted, the same rules should be included in the régime of régimes applicable to straits.

The basic principles laid down in the original draft had been retained, but with slight modifications. For instance, prevention of infringement of the fisheries regulations of the coastal State was provided for in article 5. Similarly, the right of the coastal State to control fishery activities in its own waters and to take measures to prevent pollution under the 1973 convention on the prevention of pollution from ships was established. The new draft articles gave a clearer definition of the powers of the coastal States and they did not expressly include questions that were already included in other proposals.

Mr. NAJAR (Israel) said that in view of the Committee's decision to close the debate on the topics of innocent passage and freedom of navigation and overflight, his delegation would have to consider those matters together with the item under consideration.

He reiterated his delegation's position as expressed in the plenary Conference that any limitation of innocent passage through territorial sea would be counter-productive. The tendency to limit freedom of navigation, however understandable it might be historically, should not act as a barrier to the rapid development of maritime traffic or to the growing economic and technological interdependence of States.

Without any intention of disregarding the legitimate interests and rights of the coastal States, of which his country was one, freedom of navigation and overflight in all straits that linked two parts of the high sea or the high sea with the territorial sea of a State must be reaffirmed. His delegation had listened with great attention to the classification of transit passage proposed by the delegation of the United Kingdom. That classification was more empirical than normative and should be even more general so as to ensure wider acceptance.

His delegation could not, however, accept the régime proposed in article 8 of the United Kingdom draft articles (A/CONF.62/C.2/L.3) for straits linking the high sea with the territorial sea of a foreign State, because it considered the régime unjustified.

Unfortunately, the proposals in documents A/CONF.62/C.2/L.3 and L.11 did not reflect the concern that had been expressed over the issues of the exploitation of the sea-bed and of the land-locked or geographically disadvantaged countries; they even introduced an element of discrimination by ignoring the principle of equality of treatment of straits linking two parts of the high sea or the high sea with the territorial sea of a State.

The right of freedom of navigation through straits should be reaffirmed, taking into account the position of the land-locked or geographically disadvantaged countries as laid down in the Kampala Declaration and mentioned by the delegation of the Soviet Union and also that of States whose territorial sea was linked to the high sea only through a strait.

Mr. MESLOUB (Algeria) said that his country had mobilized all its resources to ensure the well-being of its people, to which end it was necessary to promote and develop broad international co-operation based on equality, respect and mutual benefit.

Algeria was a geographically disadvantaged country and, what was more, its access to the oceans was exclusively through straits. As a developing country bordering on a semi-enclosed sea and practically without resources, it should logically be subject to a special régime affording access to the oceans. That right of free transit should be similar to the right whose recognition was sought for the land-locked countries, because there would be no sense in recognizing the rights of geographically disadvantaged countries to the living resources of neighbouring economic zones if those countries were simultaneously denied the means enabling them to enjoy those rights.

With those considerations in mind, his delegation had felt it should prepare some draft articles (A/CONF.62/C.2/L.20) which, although they could be improved, would help the Conference to find a solution that was just and therefore acceptable to all States.

It should be noted above all that the draft articles had been drawn up in a special context, that of semi-enclosed seas like the Mediterranean, and would apply to only one type of straits, those joining two parts of the high sea and used traditionally for international navigation. They thus excluded the category of straits that linked the territorial sea of a State with the high sea.

A distinction was made between the régime of passage for merchant and similar vessels and warships and similar vessels. For the former, the régime of free transit should apply when they were travelling to and from ports in certain countries, like Algeria, for which the strait was the only passage. Naturally, recognition in that particular context of the right of free transit without any hindrance or restriction impled observance of certain rules intended to promote shipping.

We ships and similar vessels passing through those straits should be subject to the régime of innocent passage since a sovereign State had the right to safeguard its legitimate security interests.

That distinction took care of the interests of the international community, which were protected by the right of free transit, and straits States' rights, which were protected by the concept of innocent passage. It also demonstrated the peaceful aspirations of the small and medium-sized countries, whose sole desire was to ensure the well-being and development of their peoples.

(Mr. Mesloub, Algeria)

He emphasized that the draft articles did not refer to the question of overflight, because his delegation shared the opinion that the topic should be dealt with not by the Conference, but by other existing bodies. He also stressed that the draft articles did not question the status of passage through straits that were already the subject of international conventions.

His delegation hoped that the proposals contained in document A/CONF.62/C.2/L.20 would be supported by all delegations; it was prepared to co-operate with them to resolve the crucial problem under discussion.

Mr. PRIETO (Chile) said that his delegation attached great importance to the question of straits used for international navigation, because that was the topic that had led the great Powers to submit their first joint project, which led to the establishment of the enlarged Sea-Bed Committee.

In view of the importance of the issue for the international community, it was essential to be very strict in defining the legal form in order to avoid any ambiguity over what was meant by straits used for international navigation.

His delegation had noted that the proposals submitted on item 4 by some delegations contained no precise definition at all, a fact that it had already pointed out, together with the delegations of Canada, Norway and France, in the work of the Sea-Bed Preparatory Committee.

Straits used for international navigation had been defined by international usage, by international jurisprudence in the April 1949 judgement of the International Court of Justice on the Corfu Channel Case, and in the 1958 and 1960 Convention on the Territorial Sea and the Contiguous Zone.

In the Corfu Channel Case the International Court of Justice had defined straits used for international navigation as straits that were used for international navigation between one part of the high seas and another part of the high seas. There were two very specific elements in that definition, the first being geographical and the second the fact that the straits were used for international navigation and were traditionally used for international traffic by ships of all countries.

Referring to article 16, paragraph 4 of the Convention on the Territorial Sea and the Contiguous Zone, he noted that it too contained the two basic elements in the judgement on the Corfu Charnel Case, namely, the geographical element of linking two parts of the high seas and the traditional use for international navigation.

(Mr. Prieto, Chile)

It was therefore essential that the Convention to be drawn up by the Conference should define what was meant by straits used for international navigation. He suggested that the working paper on that question should include a foot-note indicating that straits used for international navigation referred to straits as defined in the judgement of the International Court of Justice on the Corfu Channel Case and in article 16, paragraph 4 of the 1958 and 1960 Conventions on the Territorial Sea and the Contiguous Zone.

The CHAIRMAN said that he took note of the suggestion made by the representative of Chile.

Mr. OGUNDERE (Nigeria), noting that Nigeria was not a strait State, said that its interest in the matter under consideration related to the peaceful uses of the sea by the merchant vessels of all States, including Nigeria, and to the passage of warships through straits used for international navigation within the territorial sea of a State, subject to acceptable international legal norms. He agreed with the representatives of Canada and Chile that the future Convention should contain satisfactory definition of the expression "straits used for international navigation".

A few centuries previously, the seas had belonged to two great Powers, Spain and Portugal, and the oceans of the world and the terra incognita had been divided between them by papal bulls. Later, those two great Powers had been challenged by other great Powers, including Great Britain, France, the Netherlands, Germany and Belgium, which refused to accept the situation. Since then the super-Powers had displaced the great Powers in world influence. The first two United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960, had tried in vain to grant coastal States, including strait States, sovereignty over an area of sea adjacent to their coasts. The Third Conference on the Law of the Sea must now redress the historical imbalance which had granted a few States rights and advantages over and above those enjoyed by other States.

It was in the light of that historical background that his delegation had studied the United Kingdom draft articles contained in chapter three of document A/CONF.62/C.2/L.3, document A/CONF.62/C.2/L.6 submitted by Spain, and document A/CONF.62/C.2/L.11 submitted by the socialist countries.

(Mr. Ogundere, Nigeria)

His delegation, like other delegations, drew a sharp distinction between the passage of merchant vessels through straits which formed part of the territorial sea and the passage of warships and submarines through those straits. Documents A/CONF.62/C.2/L.3 and L.11 both postulated freedom of passage similar to the freedom of the high seas, referred to as the "right of transit passage" in document A/CONF.62/C.2/L.3 and as "freedom of navigation" in document A/CONF.62/C.2/L.11.

His delegation agreed that all States should enjoy the right of transit passage or freedom of navigation through all straits lying outside the territorial waters of coastal States and therefore within exclusive economic zones or in the high seas, irrespective of whether the breadth of the territorial sea was fixed in the Convention at 12 or 50 nautical miles. As proclaimed in the Declaration of the Organization of African Unity on the issues of the law of the sea, contained in document A/CONF.62/33, his delegation attached great importance to international navigation through straits that formed part of the territorial sea of a State and, in principle, supported the régime of innocent passage subject to further clarification concerning the definition of the régime.

He described some of the clarifications which would have to be made in such a definition. Under article 14, paragraph 6, of the 1958 Convention on the Territorial Sea, submarines were required to navigate on the surface and to show their flag while exercising the right of innocent passage through the territorial sea. Also, under article 15, the coastal State must not hamper innocent passage through the territorial sea, and under article 16 the coastal State could take the necessary steps in its territorial sea to prevent passage which was not innocent.

The draft articles submitted by the United Kingdom and contained in part III of document A/CONF.62/C.2/L.3 were very useful, although in his view article 16 should end at paragraph 2 (c). Article 17 of that draft, which contained only paragraph 3 of article 16 of the Convention on the Territorial Sea and the Contiguous Zone, should include the other paragraphs of that article, thus taking fully into account section III of the Convention relating to the right of innocent passage.

He agreed that all reference to freedom of overflight should be deleted in documents A/CONF.62/C.2/L.3 and L.11.

His delegation had listened attentively to arguments adduced to link passage through straits with the national security of a State or group of States, and felt that the

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concept of State power had changed since the Charter of the United Nations had entered into force. Referring to Article 24, paragraph 1, of the Charter, he said that national security arguments in favour of freedom of passage through straits were untenable in international law unless they were based on a treaty entered into by the strait States guaranteeing freedom of navigation through the straits to all States parties to the treaty.

One of the positive elements of the proposals submitted by the United Kingdom and by the socialist countries was the provision regarding responsibility of the flag State for damages caused by ships passing through straits and the territorial sea. He congratulated the sponsors of both drafts.

Mr. MATI (Albania) said that he supported the principle of the sovereignty of straits States. States had the sovereign right to establish the régime necessary for the protection of their interests while, at the same time, they should permit international navigation without any discrimination whatsoever.

In that connexion, he observed that there were two trends representing two groups of States. The first group consisted of coastal States which felt threatened by the expansionist and imperialist policy of the super-Powers and claimed sovereign rights over their territorial waters, including straits. The second was made up of the two super-Powers, which had built up considerably their armies, navies and air forces, and advocated free passage through straits. His country, like all peace-loving countries, supported the former group of States and would oppose the imperialist policy of the super-Powers.

Passage through straits should be effected in conformity with the laws of the coastal State, which would issue the appropriate authorization to warships and military aircraft. As to merchant vessels, it was unanimously agreed that they should be allowed to pass through straits without restrictions, but the coastal State could establish any regulations it deemed necessary to protect itself against threats to its sovereignty which might result from the use by certain Powers of merchant ships for the purpose of espionage.

The defence of the sovereignty of the coastal State over the waters of straits was a matter of principle which, because of the threat posed by the expansionist policy of the super-Powers, involved security matters.

The question of straits not used for international navigation was an internal affair of the States directly concerned and they themselves should settle it.

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Mr. AL-SABAH (Kuwait) said that he was making the first part of his statement on behalf of Iraq, the Organization of African Unity, the Libyan Arab Republic, Saudi Arabia, Qater and Kuwait. The term "straits used for international navigation" should be strictly confined to straits which connected two parts of the high seas. Because of that view, the Governments on whose behalf he was speaking had not adhered to the Convention on the Territorial Sea and the Contiguous Zone of 1958, since they opposed the interpretation of that concept in article 16, paragraph 4, of that Convention which treated all straits alike. That provision had been politically motivated by the desire to accommodate specific interests in a particular region.

Speaking on behalf of his own delegation, he said that the attitude of States towards the question of straits was largely determined by geographical considerations and political realities which divided States into three main categories:

(a) States bordering on straits,

(b) Small Powers which had a vital interest in commercial navigation through straits

(c) Great Powers which, in addition to their interests in commercial navigation, claimed special privileges for warships and military aircraft.

The straits State had a right to security, order and the protection of its coasts against pollution and other hazards. At the same time the legitimate right of merchant vessels of the international community to free and unimpeded passage through straits used for international navigation should be recognized.

Innocent passage was currently determined subjectively by the coastal State, which could decide arbitrarily if passage was prejudicial to peace, order or security. Objective criteria should be formulated which would guarantee freedom of transit to all merchant vessels, while at the same time safeguarding the basic interests of the coastal State.

Nevertheless, different criteria should be applied to warships and military aircraft in view of the risk involved in their passage. The concept of prior notification could serve as a compromise formula.

Special attention should be paid to the problem of States whose only access to the ocean was through straits. The commercial navigation of those States depended totally on the concept of freedom of transit. The commercial interests of those geographically disadvantaged States should be protected. His delegation intended to present a detailed text relating to the concepts which he had just discussed.

Mr. YANKOV (Bulgaria) said that since his country faced a semi-closed sea and its only access to the oceans was through international straits, it attached great importance to the establishment of an equitable and viable régime of transit through straits used for international navigation. The functional approach of the just communicationis which had always been followed and which was a fundamental part of maritime law led to a significant differentiation between the régime of the territorial sea and that of straits used for international navigation. That differentiation could not be disregarded on the basis of the contention that those straits were part of the territorial sea: such reasoning was not necessarily founded on either law or practice.

Conscious of the legitimate rights of the coastal States, Bulgaria and the five other delegations which had sponsored the draft articles circulated in document A/CONF.62/C.2/L.11 had sought to achieve a fair balance of all interests in a solution which to a large extent was a departure from the traditional concept of freedom of the high seas in respect of straits used for international navigation and envisaged a régime of regulated free and unimpeded transit. The right of flag States to freedom of navigation carried explicit counterpart requirements and obligations. For example, different paragraphs of the draft articles contained provisions stating that warships in transit should not engage in military or other activities; that the coastal State should have the right to designate sea-lanes and traffic separation schemes; that ships in transit, in particular supertankers, should take all precautionary measures to avoid causing pollution of the waters and coasts of the straits; that the shipowner or the person liable for damage to the coastal State, including in the last resort the flag State, should assume responsibility for such damage; that in recognition of its economic interests the coastal State should have sovereign rights over the waters, sea-bed and living and mineral resources of the straits; that the coastal State should not place in the straits any installations which could interfere with or hinder the transit of ships.

Those provisions reflected the great efforts which had been made to reconcile the traditional régime of freedom of the high seas applied to straits used for international navigation with the requirements of coastal States.

(Mr. Yankov, Bulgaria)

It had been argued that the régime of free transit through straits should apply to merchant ships only and that prior authorization by the coastal State should be required for the transit of warships. However, that criterion might give rise to serious problems by permitting the granting or refusal of access to straits for subjective reasons which might very often be arbitrary or political. It was inadmissible that a very limited number of States bordering straits used for international navigation should assume such discretion with regard to the global system of navigation and the military balance in the oceans. International transport and communications, and world peace and security were of vital concern to the international community as a whole. Consequently, their control could not be left in the hands of a few States. On the contrary, it should be based on an objective and equitable régime which would provide a viable international legal framework in which they would function.

With regard to overflight, the régime of free passage envisaged in article 3 of the draft articles would apply mutatis mutandis. That régime was closely connected with the régime of straits, as it was an important part of the global system of communications. Consequently, there was no justification for the view that the question of overflight was not within the scope of the law of the sea, and the Convention to be prepared should contain some basic principles on that issue. If necessary, there might be a treaty dealing entirely with aerial navigation.

His delegation supported the proposal that the future Convention should contain a reference to the Charter of the United Nations. Furthermore, it was prepared to take into account reasonable proposals which would lead to genuine negotiations in which the régime for straits would be considered jointly with the régime for the territorial sea, the concept of an economic zone, and the international régime for the sea-bed and ocean floor beyond the limits of national jurisdiction.

Mr. AL-QADHI (Iraq) said that his delegation did not agree with article 3 in the draft articles submitted by Spain contained in document A/CONF.62/C.2/L.6. With regard to the draft articles contained in document A/CONF.62/C.2/L.11, he felt that article 1 was a safeguard and ensured freedom of navigation through straits linking two parts of the high seas while taking account of the interests of coastal States. That article took into consideration the aspirations of the world community. The criterion on the basis of which it had been formulated was an objective one and took cognizance of the world community's need to develop international trade and communications, while

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(Mr. Al-Qadhi, Iraq)

accommodating the interests of all States concerned. His delegation supported that article because it felt that freedom of navigation was one of the basic principles of the law of the sea.

Nevertheless, his delegation had reservations concerning article 2 of the proposal and also with regard to article 8 of the United Kingdom draft in document A/CONF.62/C.2/L.3 and he reiterated what had been stated by the representative of Kuwait on behalf of Iraq and other States.

He appealed to the United Kingdom to delete article 8 of its draft. Similarly, he asked the six Powers which had sponsored the draft articles contained in document A/CONF.62/C.2/L.11 to delete article 2 of their text.

Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that his country had joined in sponsoring document A/CONF.62/C.2/L.11 because it attached great importance to the problem of straits used for international navigation. His delegation had already explained its position in that respect during the preparatory work of the Sea-Bed Committee.

Some straits were the shortest and most convenient route between seas and oceans and were the only way for States to communicate, co-operate in different spheres and develop economic, commercial and other relations. It was therefore wrong to say that the maintenance of free transit through straits used for international navigation was of interest only to certain States, even though his delegation was fully aware that all countries did not use the ocean space and straits to the same extent at the present time.

When establishing principles for international navigation, it was important to remember that they should be valid for at least a decade; it was therefore necessary to take future prospects into account, since international straits were becoming increasingly important for the development of the international navigation of all countries and for the encouragement of international relations.

Although some countries had access to the sea without passing through any strait, many other countries, such as the Mediterranean and the Black Sea countries, depended on such passage to gain access to the sea.

His country attached particular importance to the articles contained in document A/CONF.62/C.2/L.11, especially article 1, and insisted that freedom of navigation and overflight in the air space traditionally used by foreign aircraft for transit between one part of the high seas and another part of the high seas must be recognized.

(Mr. Sapozhnikov, Ukrainian SSR)

The Ukrainian SSR was fully aware that it was equally important to ensure the legitimate interests of the coastal States concerned. The draft articles included detailed provisions in that respect and could constitute a good basis for the future convention, taking account of the interests of all States.

The concept of innocent passage could not be the basis for a satisfactory arrangement. That concept could not be applied to straits which formed part of the high seas. Ships passed from one part of the high sea to another through those waterways, which were often their only means of access to the ocean; navigation in the straits could therefore not be subject to unilateral rulings by coastal States.

Coastal States must, of course, have some control over navigation through the straits, but such control should be compatible with the interests of international navigation. To grant coastal States absolute power of control did not safeguard equality and justice, since it could lead to discrimination against States with which they did not maintain good relations.

Those advocating the principle of control by the coastal State based their opinion on the increasing threat represented by the strategic interests of the navies of the super-Powers. It should, however, be clearly stated that the coastal State's control over the straits would not prevent an increase in the number of warships, since most countries possessing such fleets did not have to pass through straits to reach the oceans. That problem could only be solved by adopting the proposal of the Union of Soviet Socialist Republics concerning general and complete disarmament. The régime for the territorial sea could not serve as a basis for that for straits.

With regard to the statement made by the representative of China at the preceding meeting, that country was continually holding up the work of the Conference by its insistence on making factious statements. For instance, it had referred to the activities of warships of other countries as if it itself possessed none. It might be asked therefore what was China's position on disarmament. The truth was that when the Soviet Union, supported by the majority of developing countries, had proposed that a conference on general disarmament should be convened, China had raised objections; when the idea of a declaration on the prohibition of nuclear weapons had been discussed in the General Assembly, that idea had been supported by the developing countries, but not by China; China had also opposed the reduction of defence budgets, which would have freed resources to help the developing countries.

Mr. JUNIUS (Liberia) said that, as already indicated in the statement made in plenary meeting on 9 July, Liberia endorsed freedom of passage through straits used for international navigation. For the time being, his delegation would not press for a régime of "free" as opposed to "innocent" passage, since those terms had not yet been satisfactorily defined by the Committee.

The Conference on the Law of the Sea might perhaps alter a large part of the law of the sea, but he emphasized that the law in question was not that embodied in treatises on the subject, nor was it that laid down in conventions which had not yet entered into force. The fundamental law of the sea that currently prevailed was grounded on the concept of mare liberum, which had been accepted for centuries by all States as a cardinal tenet of the customary law of nations.

In the view of his delegation, the obligation of those who wished to assert the necessity for an extended control of navigation was to adhere to completely objective safeguards, established by international agreements, with specific guarantees against the discriminatory application of control measures.

All that his delegation was asking was that those who advocated an international agreement with a view to extending their marine territory so that it would encompass international straits should accept in the same agreement firm commitments to respect the rights of those countries whose vessels traversed the straits, on the basis of freedom of the seas.

Mr. FRASER (India) recalled that, in its statement of 3 July on the question of straits, his delegation had expressed its concern for the development of its merchant fleet and had declared its support for proposals which ensured smooth and unimpeded passage of merchant ships, and of all other vessels, whether on the high seas, or through straits used for international navigation, or through other traditional channels of navigation. It was obvious that passage through straits used for international navigation was absolutely necessary for international communications and economic development, although admittedly passage through territorial waters might simply be a matter of convenience. For that reason, any obstacle to passage through straits might have very far-reaching consequences in terms of transport costs and time.

There had been some proposals that merited careful consideration, and among them it was pertinent to quote those that endeavoured to strike a balance between the interests of flag States and the interests of coastal States or States bordering on

(Mr. Fraser, India)

straits. The draft articles contained in chapter III of document A/CONF.62/C.2/L.3, presented by the United Kingdom, and the amendments to them proposed by Denmark and Finland in document A/CONF.62/C.2/L.15 might be found useful in that respect.

The six-Power proposal in document A/CONF.62/C.2/L.11, and the proposal made by Oman, in document A/CONF.62/C.2/L.16, were also of interest.

In the view of his delegation, it was necessary to lay down provisions which would impose a duty on the flag-State to ensure protection of the interests of the coastal States concerned - a consideration of vital importance for the security of the coastal State and for the protection of its marine environment. Similarly, provisions would also have to be laid down to ensure the expeditious and uninterrupted passage of ships, and others that would impose a duty on transiting ships to refrain from engaging in activities which were not related to simple passage, such as fishing. Those provisions should also prohibit warships from engaging in any exercises or manoeuvres, using weapons, launching or taking on board any aircraft and carrying out scientific research. As had been suggested by the representative of Singapore, a suitable régime might be evolved for the passage of submarines which would take into account the need for them to navigate on the surface while in transit through straits.

Clearer provisions would also be needed for the prevention and control of pollution by ships, and to establish the responsibility of the flag-State in respect of damage resulting from non-compliance with the laws of the coastal State.

His delegation also wished to revert to the proposal submitted by a number of delegations in the Sea-Bed Committee, and to the variants thereon, and he expressed the hope that the Chairman would make an assessment of the various proposals, in order to provide a basis for consideration of a question of such importance to coastal States, to States bordering on straits, and to the international community in general.

OTHER MATTERS

Mr. GODOY (Paraguay), supported by Mr. ARIAS SCHREIBER (Peru), speaking on a point of order, formally proposed that, under rule 26, of the rules of procedure, the Committee should limit speeches to a maximum of 15 minutes.

The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to limit speeches to a maximum of 15 minutes.

It was so decided.

Mr. LING (China), speaking in the exercise of his right of reply, said that the fact that his delegation had supported the proposal that a clear distinction should be drawn between merchant vessels and warships, thus revealing the real purpose of the super-Powers in advocating freedom of navigation, had induced the delegation of the Ukrainian Soviet Socialist Republic to defend its position by sophistry.

On the subject of disarmament, China was opposed to indiscriminate "general disarmament" and favoured genuine disarmament, which must be, first of all, the disarming of the super-Powers. China refused to become a party to the Partial Nuclear Test Ban Treaty because it wished to eliminate the nuclear monopoly and nuclear blackmail of the super-Powers. China's nuclear tests were for the sole purpose of self-defence and it had declared that it would never be the first to use nuclear weapons. That pledge remained valid, and the super-Powers had not yet dared to undertake such a commitment.

China had also settled its boundary questions with most of its neighbouring countries and had not a single soldier stationed abroad, or a single military base. By contrast, there were those who were engaged in frenzied arms expansion and who were constantly dispatching their warships thousands of miles off to interfere in the internal affairs of other countries, resorting to every possible means of securing military bases in other countries, conducting military exercises in the off-shore areas of other countries and plundering their resources. Those were facts that had been denounced by world public opinion and had called forth protests from the Governments of several countries; the truth could not be distorted by sophistry.

Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) speaking in the exercise of his right of reply, said the real fact was that the representative of China had not referred to any of the questions raised by his own delegation.

The meeting rose at 7.00 p.m.